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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

WRIT PETITION NO. 2607 OF 1990

Petitioner : P.M. Dewangan

Versus

Respondents : The Food Corporation of India & others

Post for order on 6th February, 2006

Sd/-
Satish K. Agnihotri
Judge

4.2.2006

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WRIT PETITION NO. 2607 OF 1990

Petitioner : P.M. Dewangan, aged about 43 years, S/o Shri Deen Dayal Dewangan, R/o Sakti, Post and Tahsil Sakti, District Bilaspur (C.G.).

Versus

Respondents :1. The Food Corporation of India 16/20, Barakhamba Lane, New Delhi, through its Managing Director.

2. The Zonal Manager (West) The Food Corporation of India, Zonal Office, Mistry Bhawan, D.W. Road, Church Gate, Bombay-20.

3. The Senior Regional Manager, The Food Corporation of India, The Regional Office, Chetak Building, Maharana Pratap Nagar, Habibgunj, Bhopal (M.P.).

4. Shri N.N. Mukherjee, The Then Inquiry Officer, Now District Manager, The Food Corporation of India, Near Gurudwara, Moti Tabela, Gwalior (M.P.).

Present: Shri S.P. Sharma, counsel for the petitioner.
Shri B.P. Gupta, counsel for the respondents.

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ORDER

(6th February, 2006)

1. The present petition filed under Article 226/227 of the Constitution of India impugns the order dated 25.9.1987 (Annexure P-13), whereby the Regional Manager, Food Corporation of India imposing the penalty on the petitioner of "Removal" from the service of the Corporation and the order dated 12th September, 1988 (Annexure P-14), whereby the appellate authority i.e. Zonal Manager (West)/respondent No. 2 affirmed the findings recorded by the disciplinary authority and upheld the order of removal passed by the disciplinary authority.

2. According to the petitioner, the petitioner was working as Assistant Grade-II (Depot) at Food Corporation of India, Depot Naila under the District Manager, Food Corporation of India, Bilaspur. The petitioner was issued charge-sheet of following of article of charges :-

> "On 13.7.1978 two trucks of Sugar each containing 100 bags dispatched Ex. Dabra in truck No. MPW-1254 and MPG-9889 against truck chits No. 4713 and 4714, both dated-12.7.78 for lahar were got unloaded at 'B' shed of FCI Depot, Gwalior on 13.7.78 by Shri PM Dewangan, who was the shed incharge of 'B' shed. It was reported by the watchman posted on the shed that in each the above trucks only 95 bags against 100 bags totaling 190 bags against 200 bags were unloaded at the shed and dumped. The physical verification of sugar on B shed was therefore conducted by Shri KK Khurana, Asstt.Manager (Depot) Gwalior, associated by Shri PM

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Dewangan and a few other godown officials and he found that :

i) 10 bags of sugar was short in stack No. B-2/4, where the above referred two trucks of sugar were unloaded, against dispatch of 200 bags and 190 bags were unloaded, against dispatch of 200 bags and 190 bags were found in the stack and accounted for as 200 bags in godown register.

ii) 8 bags of sugar in B-2/5 were found excess. 3 bags of sugar in stack B-1/4 and B-2/5 were also found excess."

3. Accordingly, the petitioner was charge-sheeted for mis-appropriation of 10 bags of sugar found short in stack No. B-2/4 and for not accounting for 8 excess bags of sugar found in stack No. B-2/5 and similarly 3 bags of sugar found excess. He was accordingly further charged for not maintaining account as per procedure and allowing unloading of sugar truck at Gwalior instead of Lahar without permission of the Assistant Manager (D), FCI, Gwalior. The said charges pertain to the period, when the petitioner was posted at Food Storage Depot, Gwalior.

4. The petitioner, thereafter, requested the respondent No. 3 vide letter dated 10.4.1985 to permit the petitioner to visit Gwalior for verification of the concerned records. The petitioner was not permitted to have spot verification, but he was granted permission to have inspection of all the documents listed with the memorandum of charge-sheet at Regional Office, Bhopal. It is further alleged that list of additional documents and

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names of witnesses were submitted by the petitioner by letter dated 19.2.1987.

5. It was averred that the enquiry officer proceeded exparte in the enquiry, despite the fact that the petitioner has expressed inability to attend the hearing and sent a telegram accordingly on 23.2.87. Thereafter, the petitioner was never informed about the subsequent dates i.e. 26.3.87, 27.3.87, 28.3.87 and 29.3.87. PW-2, PW-3, PW-4, PW-5, PW-8, PW-9 and PW-11 were examined in the absence of the petitioner between the period from 23.3.87 to 29.9.87. The enquiry officer acted in violation of principles of natural justice and in perfunctory and arbitrary manner by examining the witnesses in his absence and not giving an opportunity to the petitioner for cross examination of the said witnesses. The witnesses were cross examined later on.

6. The petitioner did attend the enquiry and submitted, thereafter, written brief also to the enquiry officer. The enquiry officer submitted the enquiry report on 26.6.87 (Annexure P-12), holding the charge as proved on the basis of the detailed enquiry conducted by him. The respondent No. 3 by his order dated 25.9.87 imposed the penalty of "removal" on the petitioner from the service of the Corporation. The appellate authority i.e. respondent No. 2 dismissed the appeal of the petitioner by reasoned order, confirming the order passed by the disciplinary authority.

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7. Being aggrieved, the petitioner has filed this petition seeking a direction to quash the punishment order dated 25.9.1987 and the appellate order dated 12.9.88.

8. The respondents, in their return, controverted the allegations made in the petition submitted that the petitioner has not availed alternative remedy of filing review as provided under Regulation 74 of the F.C.I. (Staff) Regulations, 1971 framed under the provisions of the Food Corporation of India Act, 1964. Regulation 74 provides for filing of review to the superior authority like against the order of the Zonal Manager to the Managing Director. The petitioner has not exhausted the alternative remedy before coming to this court. It was submitted that the petitioner was not permitted to visit at Gwalior, as all the documents which were required for verification, were available with the Senior Regional Manager, Office at Bhopal. No fruitful purpose would have been served by going to Gwalior as the documents were not available at Gwalior, but the same were available in the Regional Office, Bhopal.

9. The petitioner was granted permission for inspection of all the documents as demanded by him. The petitioner was granted 15 days time to nominate his defence assistance and the time was again extended by 7 days for the purpose of nominating defence assistance, which was done by the petitioner. The prosecution witnesses were examined from 26.3.87 to 29.3.87 because all the prosecution witnesses were present and the petitioner was given full opportunity of cross examining the

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witnesses and as such there was no violation of principles of natural justice. The allegations that enquiry officer acted in perfunctory and arbitrary manner was without any basis.

10. Shri B.P. Gupta, learned counsel appearing for the respondents relied on decision of the Supreme Court in **Narayan Dattatraya Ramteerthakhar V. State of Maharashtra**[1] in support of his contention that absence of the petitioner in departmental enquiry does not vitiate the enquiry of full-fledged nature. The Supreme Court has held as under:

> "The preliminary enquiry has nothing to do with the enquiry conducted after the issue of the charge-sheet. The former action would be to find whether disciplinary enquiry should be initiated against the delinquent. After fill-fledged enquiry was held, the preliminary enquiry had lost its importance".

11. The Supreme Court in **J.A. Naiksatam V. Prothonotary and Senior Master, High Court of Bombay and others**[2] has held as under:-

> "Lastly, it was contended that the punishments imposed on the appellants are disproportionate as there was no evidence at all to prove that these appellants received any illegal gratification. It was prayed that the appellants are innocent and the drastic punishment of dismissal should not have been imposed on them. In view of the present day situation of rampant corruption in public life, the High Court rightly imposed the punishment of dismissal on erring officers".

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[1]AIR 1997 Supreme Court 2148, [2]AIR 2005 Supreme Court 1218

12. I have heard learned counsel for the parties and perused the records appended to the pleadings.

13. It is evident that the enquiry officer has given full opportunity of hearing to the delinquent employee/petitioner. The petitioner has made inspection of all the documents relevant for the purpose of the enquiry. The petitioner has examined and cross examined all the witnesses. There is no procedural flaw or perversity in conduct of the enquiry. There is no violation of principles of natural justice or mandatory provisions of law. The enquiry officer after having conducted detailed enquiry, found the petitioner guilty of charges of corruption and held the petitioner has violated Regulation 31 and 32 of F.C.I. (Staff) Regulations, 1971. Imposition of removal from the service is not disproportionate, in view of the conduct of the petitioner, which has been found proved with malafide intention. The petitioner has caused loss to the Corporation by his conduct. The disciplinary authority as well as the appellate authority have considered the enquiry report in detail while coming to the conclusion that the petitioner deserves to be punished for removal from the service. It is well established principle of law that in exercise of its jurisdiction under Article 226/227 of the Constitution of India, this Court does not sit as an appellate court. The High Court has limited scope of reviewing the findings recorded by the enquiring authority, which was confirmed by the disciplinary authority as well as the appellate authority. I have not found any perversity or

procedural flaw in the enquiry and as such it does not warrant for any interference with the enquiry report. The punishment of removal imposed on the petitioner, in the facts of the case and in view of decisions of the Supreme Court is not disproportionate.

14. The Supreme Court in **Govt. of T.N. and others Vs. S. Vel Raj**[3] has held as under :-

> "The law on this point is also now well-settled. The Tribunal obviously committed a mistake in re-examining the evidence and holding that it did not deserve to be accepted because of the inconsistencies therein. The Tribunal was not holding a criminal trial and, therefore, ought not to have exonerated the respondent by holding that it was not proved "beyond all doubts that the applicant had consumed prohibited liquor". The finding recorded by the Enquiry Officer and confirmed by the appellate authority were based upon the evidence led during the enquiry and it was not even contended that the said findings were perverse. It was, therefore, not open to the Tribunal to record contrary findings and hold that the charge against the respondent was not proved".

15. During the course of arguments, the respondents have offered to modify the punishment of removal to compulsory retirement, in case the petitioner is agreeable. The

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[3](1997) 2 Supreme Court Cases 708

respondents are accordingly directed to consider the case of the petitioner for modifying punishment of removal to that of compulsory retirement.

16. For the reasons stated above, the petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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